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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

CLAIR VERNON QUINNINE III,

Defendant and Appellant.

A155214

(San Mateo County
Super. Ct. Nos. 18NF000316A;
18NF003908A)

On January 8, 2018, the San Mateo County District Attorney filed a complaint in Superior Court case No. 18NF000316A, charging defendant with three felony offenses of receipt of stolen property, shoplifting, and possession of a controlled substance, and a misdemeanor offense of identity theft (Pen. Code,¹ §§ 288.5, 496, subd. (a), 459.5, 530.5, subd. (c)(1)); Health & Saf. Code, § 11350, subd. (a)) (felony complaint case). The next day, on January 9, 2018, defendant was charged with a probation violation in Superior Court case No. SC82879 for his failure to report to his probation department officer (probation violation case). Thereafter, on May 2, 2018, following defendant's waiver of a preliminary hearing, the San Mateo County District Attorney filed an information in Superior Court case No. 18NF003908A, charging defendant with the felony offense of failure to register as a sexual offender with a previous conviction for failure to register (§ 290.018, subd. (b))(failure to register case). The information also contained several sentence enhancement allegations, including that defendant was subject to sentencing

¹ All further unspecified statutes references are to the Penal Code.

under the Three Strikes Law, having suffered a prior strike conviction (continuous sexual abuse of a child) (§ § 288.5, 667, subds. (b)–(j), 1170.12).

On June 18, 2018, the court held a combined change of plea and sentencing proceeding. Defendant appeared in court, represented by counsel. He confirmed he had read, understood, and signed a plea agreement with the People, which covered all charges and sentence allegations in the felony to register and probation violation cases, as well as, the dismissal of the felony complaint, and agreements concerning the sentences to be imposed and the allocation of credits for time served including a waiver of referral to the Probation Department for a presentence report. In the failure to register case, as agreed, defendant pleaded no contest to failing to register and he admitted to having suffered a prior strike conviction, with the remaining sentencing allegations dismissed. In the probation violation case, as agreed, defendant admitted to violating his probation. Having advised defendant of his rights, the court accepted his pleas and admissions and terminated his probation, after finding that defendant made a knowing, intelligent, and voluntary waiver of his rights and that a factual basis existed for the plea, admission of the prior strike conviction, and probation violation.

The court, as agreed, imposed a sentence of the low term of 16 months in state prison, doubled because of the prior strike conviction in the failure to register case, and further imposed a consecutive term of eight months (“one-third” the middle term) in the probation violation case. In further consideration for defendant’s plea and the “adequate sentence” in the failure to register case, and his admission in the probation violation case, the court dismissed all charges in the felony complaint case on the People’s motion. Defendant was also awarded, as agreed, credits for time served in the aggregate amount of 324 days (162 days, doubled under section 4019, subdivision (f)), and after application of the credits, defendant’s eight-month term (240 days) imposed in the probation violation case was deemed served, and 84 days were applied to the 32-month term imposed in the failure to register case.

Defendant filed a timely notice of appeal, accompanied by a request for a certificate of probable cause. He checked the box on the notice of appeal form indicating

his appeal “is based on the sentence or other matters occurring after the plea that do not affect the validity of the plea. (Cal. Rules of Court, rule 8.304(b).)” In his request for a certificate of probable cause he sought to challenge the “legality” of his 32-month term in the failure to register case, asserting the court should have held a “Romero Hearing.” (*People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, 504 (*Romero*) [trial courts given discretion to strike prior felony conviction allegations in cases arising under the Three Strikes Law].) The trial court denied defendant’s request for a certificate of probable cause.

Defendant’s appellate counsel has filed a brief raising no issues and asks us to independently review the record under *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). By his notice of appeal defendant does not challenge the validity of his no-contest plea in the failure to register case, but nevertheless he sought to challenge the “legality” of his 32-month sentence. Under these circumstances, we consider “whether a challenge to the sentence is *in substance* a challenge to the validity of the plea, thus rendering the appeal subject to the [certificate] requirements of section 1237.5.” (*People v. Panizzon* (1996) 13 Cal.4th 68, 76.) Because defendant agreed to the 32-month sentence as part of a negotiated plea agreement, his sentence challenge “is, in substance, attacking the validity of the plea,” and therefore, we cannot review the issue in the absence of a certificate of probable cause. (*Id.* at p. 78.) Moreover, defendant’s appeal does not bring up for review the propriety of the court’s denial of a certificate of probable cause. (*People v. Castelan* (1995) 32 Cal.App.4th 1185, 1188 [“a trial court’s refusal to issue a certificate of probable cause is reviewable by writ of mandate”].) Even assuming the issue was properly before us, we would conclude there is no merit to a challenge to the court’s denial of the certificate of probable cause. (See *People v. Cunningham* (1996) 49 Cal.App.4th 1044, 1047–1048 [defendant’s express agreement to 32-month sentence (16 months doubled for a prior strike conviction), as part of a plea bargain, precludes remand for a *Romero* hearing].)

Based on our independent review of the record, we agree with appellate counsel that there are no issues warranting further briefing. As required by *People v. Kelly*

(2006) 40 Cal.4th 106, 124, we affirmatively note defendant was informed of his right to file a supplemental brief and he has not filed such a brief.

DISPOSITION

The judgment is affirmed.

Petrou, J.

WE CONCUR:

Siggins, P.J.

Fujisaki, J.